with at all in the written contract. See 4 WIGMORE, EVIDENCE, § 2430. A promissory note often is but a part of a larger contract. *Leach* v. *Hill*, 106 Ia. 171, 76 N. W. 667; *Goodwin* v. *Nickerson*, 51 Cal. 166. In the present case, the letter does not contradict the express terms of the note but introduces a new element, the time at which demand is to be made. The letter and the note may well be read together as parts of one contract. *Cf. Jacobs* v. *Mitchell*, 46 Ohio St. 601; *American Gas and Ventilating Co.* v. *Wood*, 90 Me. 516; *Rogers* v. *Smith*, 47 N. Y. 324. But *cf. Porteous* v. *Muir*, 8 Ont. Rep. 127; *Rivers* v. *Brown*, 62 Fla. 258, 56 So. 553. The contingency in this case is one that may never happen. It is clear that the parties contemplated payment at some time rather than a gamble on the rate of exchange. The court is right, therefore, in construing the note to be payable on demand after a reasonable time. *Nunez* v. *Dautel*, 19 Wall. (U. S.) 560.

PROXIMATE CAUSE — ACTIVE CAUSE — INTERVENING FORCE. — Despite knowledge of an oncoming tempest, the defendant tug proceeded with its tow into the storm, and was finally forced to cast the tow adrift to save itself. The captain of the tow, during the two days in which the storm raged, became exhausted by his efforts to keep his ship afloat. The weather moderated during the ensuing two days and the tow attempted to make port. The exhausted captain failed to see a hidden shoal marked on his map with very small dots and consequently wrecked his vessel upon it. The owner and underwriter of the tow seek damages from the tug for the loss. The lower court gave judgment for the libelants, finding that the tug was negligent in proceeding into the storm and that the failure of the captain to discover the shoal was due to his exhaustion. *Held*, that the decree be affirmed. *Nehalem Steamship Co.* v. *Aktieselskabet Aggi*, The Recorder, Oct. 9, 1922 (C. C. A., 9th).

Where the defendant's negligent act places another in peril, the direct result of action by the latter to avoid this impending danger is the proximate result of the defendant's act. *Jones* v. *Boyce*, 1 Stark. 493. *Cf. Leyland Shipping Co.* v. *Norwich Union Fire Ins. Society* [1918] A. C. 350. Where this intervening act is instinctive, a failure to use mature deliberation will not break the chain of causation. This inability to use discretion is directly caused by the defendant. *Wilson* v. *Northern Pacific R.R. Co.*, 26 Minn. 278, 3 N. W. 333; *Nixon* v. *Williams*, 25 Ga. App. 594, 103 S. E. 880. *Cf. People* v. *Lewis*, 124 Cal. 551. In the principal case the defendant's act directly caused the captain's exhaustion, which in turn caused him to steer his vessel upon the shoal. The fact that one of this series of direct active forces must be traced through the mind does not alter the chain of causation. *Re Sponatski*, 220 Mass. 526, 108 N. E. 466. *Cf. Ex parte Heigho*, 18 Ida. 566, 110 Pac. 1029; *Regina* v. *Towers*, 12 Cox C. C. 530. Nor is the lapse of time material. *Western Union Tel. Co.* v. *Preston*, 254 Fed. 229 (3rd Circ.). Where the final result has been produced by an independent intervening force whose action was risked by the defendant's act, foreseeability of the intervention of this force is decisive of proximity of causation. *Gilman* v. *Noyes*, 57 N. H. 627. But in cases similar to the principal one, foreseeability of result is no test of proximate causation. See Joseph H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 649. See Jeremiah Smith, "Legal Cause in Actions of Tort," 25 HARV. L. REV. 103, 223, 303. A failure to recognize this distinction has too often led to incorrect conclusions. *Anthony* v. *Slaid*, 11 Met. (Mass.) 290; *Fowlkes* v. *Southern Ry. Co.*, 96 Va. 742, 32 S. E. 464. Foreseeability in the principal case is only a test to determine the fact of the defendant's negligence and not the proximity of results

which may flow from such negligence. See *Smith* v. *London & Southwestern Ry. Co.*, L. R. 6 C. P. 14, 21, *per* Channel, B. and Blackburn, J. See Jeremiah Smith, *supra*, 25 HARV. L. REV. 241–246.

SALES — CHATTEL MORTGAGES — TRUST RECEIPT INVALID UNLESS PROPERTY COMES FROM THIRD PARTY. — The bankrupt borrowed money from the petitioner giving a demand note and as security therefor a document purporting to be a trust receipt setting aside certain dolls as the property of the petitioner. This document was not recorded and the dolls remained continuously in the possession of the bankrupt. The receiver having refused to deliver possession of these dolls, the petitioner obtained an order from the District Court directing delivery. *Held*, that the order be reversed. *In re A. E. Fountain, Inc.*, 67 N. Y. L. J. No. 149 (2nd Circ.).

A trust receipt is generically a chattel mortgage. But when properly used, the resulting legal consequences differ materially from those of an ordinary chattel mortgage. *In re Dunlap Carpet Co.*, 206 Fed. 726, 730 (E. D. Pa.); *Moors* v. *Kidder*, 106 N. Y. 32, 44, 12 N. E. 818. See Karl T. Frederick, "The Trust Receipt as Security," 21 COL. L. REV. 395, 403. Where the holder of the trust receipt derives his security title from a party other than the one responsible for the satisfaction of the obligation which the property secures, then for reasons of business necessity and on a balance of conveniences, the courts do not require recording. *In re Cattus*, 183 Fed. 733 (2nd Circ.). See Samuel Williston, "The Progress of the Law, — Sales," 34 HARV. L. REV. 741, 758. But where this salient characteristic of the trust receipt situation is absent, the facts resolve themselves into the ordinary case of a chattel mortgage and peculiar considerations of policy do not apply. *In re Gerstman*, 157 Fed. 549 (2nd Circ.); *In re Shulman*, 206 Fed. 129 (E. D. Pa.). See Karl T. Frederick, *supra*, 21 COL. L. REV. 395, 417, 418. The life of the doctrine of the trust receipt has been short but so far adventurous. This case should serve to warn the business man and the practitioner in search of some method of creating a secret lien, that this device will help them little. If the policy of the law has been relaxed in any way, it has been only within narrow limits. And *cf. Commercial etc. Bank.* v. *Canal Bank.*, 239 U. S. 520.

SPECIFIC PERFORMANCE — DEFENSES — LACK OF MUTUALITY IN NEW YORK. — The vendees assigned the defendant's contract to convey realty, to the plaintiff, who did not assume the burdens of the contract. The Appellate Division reversed a decree of specific performance. *Held*, that the judgment be reversed. *Epstein* v. *Gluckin*, 233 N. Y. 490, 135 N. E. 861.

The earliest New York decision on mutuality required simply mutuality of obligation, that is, consideration. See *German* v. *Machin*, 6 Paige Ch. (N. Y.) 288, 292. Avoiding Fry's extreme theory, the court seemed later to have adopted Pomeroy's view that at the time of a bill there must be mutuality of remedy. *Wadick* v. *Mace*, 191 N. Y. 1, 83 N. E. 571; *Levin* v. *Dietz*, 194 N. Y. 376, 87 N. E. 454. See 5 POMEROY, EQUITY JURISPRUDENCE, 4 ed., § 2191. *Cf.* FRY, SPECIFIC PERFORMANCE OF CONTRACTS, 6 ed., §§ 460–476. The justice these rules were vaguely seeking is served, according to the present opinion, by a requirement that a decree protect the defendant, as well as the plaintiff. See AMES, LECTURES ON LEGAL HISTORY, 370; 3 WILLISTON, CONTRACTS, §§ 1433–1440. See also, William Draper Lewis, "Specific Performance of Contracts — Defense of Lack of Mutuality," 40 AM. L. REV. 270, *et seq.;* Harlan F. Stone, "The 'Mutuality' Rule in New York," 16 COL. L. REV. 443; 23 HARV. L. REV. 294. Under any statement of the mutuality rule, an assignee should